

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1001 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SANJAYKUMAR UMAKANT DESAI

Versus

RATILAL LAXMANBHAI PATEL

Appearance:

MR MA KHARADI for Petitioner

Respondent No. 1 served.

MR ARUN H MEHTA for Respondent No. 3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 03/12/96

ORAL JUDGEMENT

By virtue of this revision application, the petitioner, a claimant in Motor Accident Claim Petition has challenged an order dated 23rd February, 1996 whereby his application for condonation of delay caused in filing the Motor Accident Claim Petition was rejected.

Facts of the case in nutshell are as under :-

The petitioner met with an accident on 4th April,

1994. For a considerable long period, he did not file an application for claiming compensation. He filed Motor Accident Claim Petition before the Hon'ble Motor Accident Claims Tribunal (Main), Mahesana (hereinafter referred to as "the Tribunal") on 23rd February, 1996. Alongwith the petition, he also submitted an application for condonation of delay. The said application for condonation of delay was rejected by the Tribunal on the same day. The said order whereby the delay was not condoned and the application was summarily rejected has become subject matter of this revision application.

Learned advocate Mr Kharadi appearing for the petitioner has submitted that in view of amended Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), the Tribunal ought not to have rejected the application for condonation of delay because in fact there was no delay in filing the petition. Mr Kharadi has submitted that after 14th November, 1994, the provision with regard to period of limitation has been omitted and, therefore, the Tribunal could not have rejected the application for condonation of delay. Section 166 (3) of the Act providing for limitation was omitted by virtue of Section 53 of Motor Vehicles (Amendment) Act, 1994. In the circumstances, as per submission of Mr Kharadi, there is no period of limitation for filing a claim petition and, therefore, the petition ought not to have been rejected. Mr Kharadi has relied upon judgment delivered by the Hon'ble Supreme Court in case of Dhannalal Vs. Vijayvargiya & others (1996) 4 SCC 652.

According to the law laid down by the Hon'ble Supreme Court in the above referred case, if a claim petition is not filed before 14.11.1994 for an accident which had taken place before that day, there is no period of limitation prescribed by the Act as Section 166 (3) of the Act had been deleted with effect from 14.11.1994. Section 166 (3) of the Act was as under before the same was deleted.

"166. (3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident :

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelve months, if it is satisfied that the

applicant was prevented by sufficient cause from making the application in time."

In the instant case, the accident had taken place on 4th April, 1994. The claim petition was filed on 23rd February, 1996 and on the date of filing of petition, there was no limitation prescribed under the Act for filing the claim petition and, therefore, as submitted by Mr Kharadi, the impugned order rejecting the claim petition passed by the Hon'ble Tribunal is unjust, illegal and, therefore, the same should be quashed and set aside.

Learned advocate Mr AH Mehta appearing for respondent No. 3 fairly conceded that the law laid down in the above referred judgment delivered by the Hon'ble Supreme Court is applicable to the facts of the present petition for the reason that the claim petition was not filed before 14.11.1994. As the claim petition was filed after 14.11.1994 when Section 166 (3) of the Act was not in force, the petition could not have been rejected on the ground of limitation.

It is pertinent to note that the Hon'ble Supreme Court has clearly held in para 7 of the said judgment that if no claim petition is filed till 14.11.1994 in respect of an accident which had taken place before 14.11.1994, the petition cannot be rejected on the ground of limitation as Section 166 (3) of the Act providing for period of limitation was omitted with effect from 14th November, 1994.

In the instant case, claim petition filed by the petitioner on 23rd February, 1996 was rejected on the ground of delay. Provision pertaining to limitation was not in existence at the time when the petition was filed and, therefore, it was not open to the Tribunal to reject the said application.

In the circumstances, the revision application is allowed. Rule is made absolute and the impugned order dated 23rd February, 1996 passed by the Motor Accident Claims Tribunal (Main), Mahesana in Motor Accident Claim Petition No. 0/96 is quashed and set aside and it is directed that the Motor Accident Claim Petition filed by the present petitioner shall be taken on record and shall be dealt with in accordance with law. Direct Service is permitted.
